

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

1	IN THE MATTER OF)	
	VANCOUVER EXCAVATORS, INC.,)	
2)	
	Appellant,)	PCEB No. 472
3)	
	vs.)	FINAL FINDINGS OF FACT,
4)	CONCLUSIONS OF LAW
	SOUTHWEST AIR POLLUTION)	AND ORDER
5	CONTROL AUTHORITY,)	
)	
6	Respondent.)	

THIS MATTER being an appeal of two notices of civil penalty of \$100.00 each for an alleged open-burning violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 28th day of February, 1974, at Vancouver, Washington; and appellant, Vancouver Excavators, Inc., appearing through two of its officers, Jay Richards, Secretary-Treasurer and Stan McKay, Vice President and respondent, Southwest Air Pollution Control Authority, appearing through its attorney, James D. Ladley; and Board member present at the hearing being W. A. Gissberg; and the Board having considered the transcript, exhibits, records and files herein and having entered on the 3rd day of May, 1974, its proposed

1 Findings of Fact, Conclusions of Law and Order, and the Board having
2 served said proposed Findings, Conclusions and Order upon all parties
3 herein by certified mail, return receipt requested and twenty days
4 having elapsed from said service; and

5 The Board having received no exceptions to said proposed Findings,
6 Conclusions and Order; and the Board being fully advised in the
7 premises; now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
9 Findings of Fact, Conclusions of Law and Order, dated the 3rd day of
10 May, 1974, and incorporated by this reference herein and attached
11 hereto as Exhibit A, are adopted and hereby entered as the Board's
12 Final Findings of Fact, Conclusions of Law and Order herein.

13 DONE at Lacey, Washington, this 11th day of June, 1974.

14 POLLUTION CONTROL HEARINGS BOARD

15 Walt Woodward
16 WALT WOODWARD, Chairman

17 W. A. Gissberg
18 W. A. GISSBERG, Member

19 Mary Ellen McCaffree
20 MARY ELLEN McCAFFREE, Member

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23
24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

CERTIFICATION OF MAILING


I, LaRene C. Berlin, certify that I mailed copies of the foregoing document on the 12th day of June, 1974, to each of the following parties:

Messrs. Jay Richards
& Stan McKay
Vancouver Excavators, Inc.
9106-D N.E. Highway 99
Vancouver, Washington 98665

Mr. James D. Ladley
Boettcher, LaLonde, Kleweno
Lodge, Ladley & Witteman
P. O. Box 938
Vancouver, Washington 98660

Southwest Air Pollution Control
Authority
7601 E Northeast Hazel Dell Avenue
Vancouver, Washington 98665

the foregoing being the last known post office addresses of the above-named parties. I further certify that proper postage had been affixed to the envelopes deposited in the U.S. mail.


LARENE C. BERLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
VANCOUVER EXCAVATORS, INC.,
Appellant,
vs.
SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,
Respondent.

PCHB No. 472

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

An informal hearing on the appeal of Vancouver Excavators, Inc., to two notices of civil penalty of \$100.00 each for an alleged open-burning violation of respondent's Regulation I came before Board member W. A. Gissberg on February 26, 1974, in Vancouver, Washington.

Appellant appeared through two of its officers, namely, Jay Richards, its Secretary-Treasurer and Stan McKay, its Vice President; respondent appeared through its attorney, James D. Ladley.

Having considered the transcript of the record and the exhibits,

EXHIBIT A

1 and being fully advised, the Board makes the following

2 FINDINGS OF FACT

3 I.

4 Appellant is a corporation engaged in business as an
5 excavator. All the events hereinafter described occurred in Clark
6 County, Washington. And all times material hereto, Quadrant Corporation
7 was the owner of 60 to 80 acres of undeveloped land in Clark County.
8 The only improvement thereon was an old wooden structure. Appellant
9 entered into a contract with the landowner to do certain development
10 work on the land including the construction of storm sewers and the
11 demolition and disposal of the wooden building. Appellant did dismantle
12 the structure. The contract allowed \$2,800.00 for its removal from the
13 Quadrant property.

14 II.

15 On September 9, 1973, at approximately 3:30 a.m. the Clark County
16 Fire District No. 6 responded to a report of a fire and found a large pile
17 of building materials in flames on the Quadrant Corporation property. A
18 can was observed on top of the pile of burning material. The fire had been
19 started with the use of flammable liquids. The fire was extinguished and
20 during the daylight hours of September 9, the fire department checked the
21 scene on several occasions to make sure that the fire had been put out and
22 it had been.

23 III.

24 Shortly after midnight on September 10, 1973, the fire department
25 was again called to the scene to extinguish a new fire of the same
26 building materials. Once again, a can was observed on top of the pile

1 and the fire was of a type which enabled an experienced fire fighter
2 to conclude that the fire had been caused by the use of a flammable liquid.

3 IV.

4 The appellant was in control of the property on which the
5 fire occurred on both September 9 and 10, 1974.

6 V.

7 Appellant did experience incidents of vandalism by persons
8 unknown while engaged in work on the Quadrant property. Such
9 vandalism consisted of the breaking of a significant amount of concrete
10 pipe, the placing of sand in the gasoline tank of a backhoe and the
11 theft of parts from a truck parked upon the premises and the pulling
12 of survey stakes. Such latter actions lead to security guards being
13 posted on the property by the surveyors to protect against further
14 pulling of the survey stakes.

15 VI.

16 Two notices of violation and imposition of a civil penalty of \$100.00
17 for each of the fires was sent by certified mail to appellant. However,
18 its delivery thereof was refused. Accordingly, respondent personally
19 served Robert W. Rice, the president of the appellant corporation, with
20 the two notices of violation and imposition of civil penalties which are
21 the subject matter of this appeal. At that time the president stated
22 that "kids had set the fire", and appellant so contends in its notice
23 of appeal. Mr. Rice did not appear at the hearing. Two other corporate
24 officers did appear and testify. However, neither offered any testimony
25 concerning the cause of the fire except to state that the president of
26 the corporation had told them that it had been started "by kids".

VII.

Respondent's Regulation I, Section 4.01 makes it unlawful to ignite or cause or allow to be ignited, any open fire without a permit. No permit had been issued for these fires, nor were they otherwise exempted from the permit requirements of respondent's Regulation I.

VIII.

Respondent's Regulation I makes it prima facie evidence that the person who controls property on which a prohibited open fire occurs has caused or allowed the same.

From which the Board makes the following

CONCLUSIONS OF LAW

I.

Appellant was in control of the property on which a prohibited fire occurred. Thus, the imposition of the civil penalties must be upheld unless appellant meets and overcomes by competent evidence the prima facie case presented by respondent. Appellant has not done so. Undoubtedly, the president of appellant corporation could have supplied the Board with specific evidence relating to his personal knowledge which supported his conclusion that the fire was started by kids. However, the Board did not have the benefit of his testimony.

II.

The fact that the two fires were intentionally ignited with the use of a flammable liquid, both in the dead of night, and given the fact that appellant would benefit financially from the destruction

1 of the building materials, we are unable to conclude that appellant's
2 evidence of vandalism requires this Board to conclude that the
3 fire was ignited "by kids".

4 III.

5 Appellant was in violation of Section 4.01 of respondent's
6 Regulation I.

7 From which the Board enters this

8 ORDER

9 The appeal is denied and the notices of civil penalty in the
10 amount of \$100.00 each are affirmed.

11 DONE at Lacey, Washington, this 3rd day of May, 1974.

12 POLLUTION CONTROL HEARINGS BOARD

13 [Signature]
14 WALT WOODWARD, Chairman

15 [Signature]
16 W. A. GISSBERG, Member

17 [Signature]
18 MARY ELLEN MCCAFFREE, Member

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26 FINDINGS OF FACT,

27 CONCLUSIONS AND ORDER